

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
v.) No.: 2:09-CR-101
)
ARNOLDO COMPEAN, JR.)

MEMORANDUM AND ORDER

This criminal case is before the court on the defendant's motion for sentence reduction. [Doc. 511]. Through counsel, the defendant asks the court to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and in accordance with Amendments 782 and 788 to the United States Sentencing Guidelines Manual ("U.S.S.G."). The defendant asks the court to first determine his post-Amendment 782 guideline range and to then vary below that range.

The United States has responded to the motion [doc. 512], correctly noting that this court lacks authority to reduce the present defendant's sentence to a term less than the bottom of his amended guideline range. The United States otherwise defers to the court's discretion whether and to what extent to grant a sentence reduction, subject to the limitations of 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10.

I. Authority

"Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions." *Freeman v. United States*, 131 S. Ct. 2685, 2690 (2011) (internal citation

and quotation marks omitted). One such exception is identified in 18 U.S.C. § 3582(c)(2):

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . , the court may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

In determining whether a defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, the court must first identify “the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing.” *Dillon*, 560 U.S. at 827 (internal quotation marks and citation omitted); *see also* U.S.S.G. § 1B1.10(b)(1) (2015). Amendment 782, which became effective on November 1, 2014, revised the guidelines applicable to drug-trafficking offenses by reducing the offense levels assigned to the drug and chemical quantities described in guidelines 2D1.1 and 2D1.11. *See* U.S.S.G. app. C, amend. 782 (2014). Amendment 788, which also became effective on November 1, 2014, identified Amendment 782 as retroactive. *See id.*, amend. 788.

Other than substituting Amendment 782 for the corresponding provision applicable when the defendant was originally sentenced, the court “shall leave all other guideline application decisions unaffected.” *See* U.S.S.G. § 1B1.10(b)(1) (2015). The court “shall not” reduce a defendant’s term of imprisonment to a term “less than the

minimum of the amended guideline range,” nor to a term “less than the term of imprisonment the defendant has already served.” *Id.* § 1B1.10(b)(2)(A), (C).¹ In addition, the commentary to guideline 1B1.10 provides that a court must also consider the § 3553(a) sentencing factors and the danger to the public created by any reduction in a defendant’s sentence. *See id.* cmt. n.1(B). A court may further consider a defendant’s post-sentencing conduct. *See id.*

II. Factual Background

By judgment dated November 9, 2010, this court sentenced the defendant to concurrent terms of imprisonment of 150 months as to Count One (an oxycodone conspiracy) and Count Two (a money laundering conspiracy). The defendant’s guideline range was 168 to 210 months, based on a total offense level of 35 and a criminal history category of I. Prior to sentencing, the defendant filed a motion for downward variance which the court granted in imposing the below-guideline term of 150 months. According to the Bureau of Prisons, the defendant is presently scheduled for release on October 5, 2020.

III. Analysis

Applying Amendment 782, the defendant’s new guideline range is 135 to 168 months, based on a total offense level of 33 and a criminal history category of I. As such,

¹ Guideline 1B1.10 provides one exception to the rule that a defendant may not receive a sentence below the amended guideline range—namely, if the defendant originally received a below-guideline sentence “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities.” *Id.* § 1B1.10(b)(2)(B). The government did not file a substantial assistance motion as to the present defendant, and his current request for a below-guideline amended sentence must be denied.

the defendant was originally sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.

The court has considered the filings in this case, along with the relevant 3553(a) factors. Additionally, the court has considered the danger to the public as the result of any reduction in the defendant's sentence, the seriousness of the defendant's offense, the defendant's post-sentencing conduct, and the need to protect the public. *See id.* § 1B1.10 cmt. n.1(B)(ii). Having done so, the court finds that the defendant should be granted a sentence reduction.

IV. Conclusion

For the reasons stated herein, the defendant's motion for sentence reduction [doc. 511] is **GRANTED IN PART** and **DENIED IN PART**.

To the extent that the defendant seeks a reduced sentence pursuant to Amendment 782, his motion is **GRANTED**. The defendant's term of imprisonment is reduced to **135 months**, the bottom of his amended guideline range.

To the extent that the defendant moves for a downward variance below the amended guideline range, his motion is **DENIED**. A variance would not be consistent with § 1B1.10(b)(2) and is thus not authorized by 18 U.S.C. § 3582(c)(2).

Except as provided above, all provisions of the judgment dated November 9, 2010, shall remain in effect.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan
United States District Judge